

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND
100 Maryland Avenue, Room 330
Rockville, Maryland 20850**

Willows of Potomac Community Association,
Complainant

v.

Case #38-11
June 15, 2012

Kyung M. Yi
Respondent

JUDGMENT BY DEFAULT

(Before Alkon, Dubin, Farrar)

This matter comes before the Commission on Common Ownership Communities pursuant to Sections 10B-8, 9, and 13 of the Montgomery County Code (2010), COMCOR 10B.06.01.03(b), and the Commission's *Default Judgment Procedures*. The hearing panel has reviewed the record in this case, and now makes the following findings of fact, conclusions of law, and orders.

Findings of Fact

1. The Complainant, Willows of Potomac Community Association (hereinafter, "Association"), is a homeowners association operating under the Maryland Homeowner Association Act pursuant to covenants filed in the land records of Montgomery County, Maryland.

2. The Respondent, Kyung M. Yi (hereinafter, "Ms. Yi"), is the owner of a lot that is part of the Association, located at 10433 Procera Drive, Rockville, Maryland. This lot is subject to the Association's governing documents.

3. On August 18, 2011, the Association filed this complaint against Ms. Yi with the Commission on Common Ownership Communities ("the Commission"). The complaint alleged that Ms. Yi was in violation of the governing documents of the Association because her home had peeling paint and rotting wood on its trim and garage door. The Association requested that the Commission order the Ms. Yi to restore the trim and door to good condition.

4. The complaint further documented that the Association had notified Ms. Yi of the alleged violations on November 2, 2009; December 9, 2009; and March 7, 2011, without response from her. It then, on June 6, 2011, informed Ms. Yi that the Association's board of directors would conduct a hearing on the matter. Ms. Yi did not attend that hearing, which was held on June 23, 2011. Subsequently, on (date?), 2011, the Association notified Ms. Yi that the Board of Directors of the Association voted to find her in violation of the governing documents. The complaint to the Commission then followed.

5. Article VII, Section 10, of the Association's Declaration of Covenants states:

Each lot owner shall keep his Lot, and all improvements thereon in good order and repair, including, but not limited to, the seeding, watering and mowing of the lawn, the pruning and cutting of all trees and shrubbery *and the painting (or other appropriate external care) of all buildings and other improvements*, all in a manner and with such frequency as is consistent with good property management [. . .]. (Emphasis added.)

6. On August 19, 2011, the Commission's staff mailed a copy of the complaint, with a cover letter and other information, to Ms. Yi and instructed her to answer the complaint within 30 days. The cover letter advised her that if she did not answer the complaint, the Commission could enter a default judgment against her.

7. Ms. Yi did not answer the complaint within 30 days or at any other time.

8. On September 29, 2011, after the expiration of the 30-day response time, the Commission's staff wrote to the Association to advise it that Ms. Yi had not answered the complaint and that the Association could move for entry of an order of default against her pursuant to the Commission's *Default Judgment Procedures*. The staff sent a copy of this letter, and a copy of the *Procedures*, to Ms. Yi at the same time.

9. On October 31, 2011, the Association filed a request for entry of an order of default, and sent a copy of its request to Ms. Yi. On November 10, 2011, the staff sent notices to both the Association and to Ms. Yi informing them that the request for entry of an order of default would be considered by the Commission on December 7, 2011, and advising them of the staff's recommendation that the Commission accept jurisdiction of the complaint and issue the order of default.

10. On December 7, 2011, the Commission voted to take jurisdiction of the complaint and to issue an Order to Show Cause to Ms. Yi, and to appoint a hearing panel to handle the additional legal proceedings. The staff mailed the Order to Ms. Yi on December 15, 2011, by regular U.S. Mail. As of the date of this Judgment, the mail has not been returned to the staff by the U.S. Postal Service.

11. Photographs of the front of Ms. Yi's home, submitted to the Commission's hearing panel in March, 2011, show that much of the trim on the front of the home, and most of the molding on the garage door (which is also on the front of the home) has flaking paint, which exposes the bare wood to the elements. We find, as a matter of fact, that this home is not "in good order and repair."

Conclusions of Law

1. The Commission has jurisdiction of this dispute under Section 10B-8 of the Montgomery County Code.

2. The Commission has jurisdiction over the parties to this dispute under Section 10B-8 of the Montgomery County Code and COMCOR § 10B.06.01.03(b)(2).

3. The Association's Declaration of Covenants requires Ms. Yi to maintain the exterior of her home in good order and repair.

4. Ms. Yi has violated the governing documents of her Association by failing to maintain the paint and trim on her home in good order and repair.

ORDER

1. Within 60 days after the date of this Order, Ms. Yi must remove all rotted wood trim on the front of her home, scrape and remove all flaking paint, and repaint the trim properly so as to protect it from the elements and to restore its proper appearance.

2. Within 30 days after the date of this Order, Ms. Yi must reimburse the Association the sum of \$50.00 as its costs in this matter. If she fails to do so, the Association may add these costs to the amount owed by Ms. Yi as assessments, and may collect them in the same manner as it collects assessments, if so authorized by its governing documents and rules, or as allowed by law.

3. If Ms. Yi does not restore the trim and paint as ordered, the Association is authorized to enter on the property, with or without Ms. Yi's permission, and to make the necessary changes at Ms. Yi's cost. The Association may add these costs to the amount owed by Ms. Yi as assessments, and may collect them in the same manner as it collects assessments, if so authorized by its governing documents and rules, or as allowed by law.

4. Any failure to comply with this Order shall be a violation of the Montgomery County Code and subject to a fine of up to \$500.00 per day.

Any party aggrieved by this Order may appeal it to the Circuit Court of Montgomery County within 30 days after the date of this Order pursuant to the rules of court governing appeals from the decisions of administrative agencies.

Commissioners Dubin and Farrar concur in this decision.

Communities

Mitchell Alkon, Panel Chair
Commission on Common Ownership

June 15, 2012